



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FAX (213-897-1071) and FIRST CLASS MAIL

Susan K. Smith, Deputy Attorney General
for Kamala D. Harris, Attorney General
State of California
Department of Justice
300 South Spring Street, #1702
Los Angeles, CA 90013

DEC 17 2012

RE: MUR 6575
State of California

Dear Ms. Smith:

On May 17, 2012, the Federal Election Commission notified Attorney General Kamala D. Harris of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. On December 12, 2012, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe the State of California violated 2 U.S.C. § 441a(a)(1)(A). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Kurnau Philbert, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

13044324853

13044324854

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Lisa Buescher¹

MUR: 6575

State of California

Doug LaMalfa

Doug LaMalfa Committee

David Bauer in his official
capacity as treasurer

I. INTRODUCTION

The Complaint alleges that congressional candidate Doug LaMalfa, the State of California, and Lisa Buescher violated the Federal Election Campaign Act of 1971, as amended (the "Act"), when Buescher, a state employee, spoke at a candidate forum on behalf of LaMalfa. Respondents provided information, including an affidavit from Buescher, showing that Buescher used bona fide vacation leave to attend the forum. Based on the available information, the Commission finds no reason to believe that respondents violated 2 U.S.C. §§ 434(b) or 441a and closes the file.

II. FACTS

Doug LaMalfa was a candidate for the First Congressional District of California in 2012. The Doug LaMalfa Committee (the "Committee") is LaMalfa's congressional principal campaign committee, and David Bauer is the Committee's treasurer.

LaMalfa also was a sitting California State Senator during the relevant period.² Lisa Buescher served as LaMalfa's State District Director during the relevant period. See Doug

¹ This respondent was identified in the complaint as Lisa "Busher." She was subsequently identified as Lisa "Buescher" in responses to the complaint, and the name was changed accordingly.

² LaMalfa resigned his state senate position on August 31, 2012 to focus on the November 2012 general election, which he won. See Doug LaMalfa Committee Supp. Resp. at 1 (November 13, 2012).

1 LaMalfa Committee Supp. Resp., Attach. at 1 ("Lisa Buescher Decl.").

2 The Complaint alleges that Buescher, a paid state employee, attended a candidate forum
3 on behalf of LaMalfa to promote LaMalfa's congressional candidacy. *See* Compl. at 1. The
4 forum was held by the Nevada County Republican Women Federated ("NCRWF") political
5 organization March 20, 2012, at the Alta Sierra Country Club in Grass Valley, California. *Id.*
6 The forum provided an opportunity for Republican candidates for various federal and state
7 offices to present their qualifications and platforms. *See* Compl. The minutes of the program,
8 attached as an Exhibit to the Complaint, show that the forum was set up so that each candidate
9 or representative was allowed to speak for five minutes and answer questions after the forum.
10 *See* Compl., Ex. 2. According to the NCRWF minutes, 13 candidates or their representative
11 attended the forum, including "US Cong. Rep. Dist. 1, District director for incumbent Doug
12 LaMalfa, Lisa Buser [sic]." *Id.* The minutes indicate that the forum began at 12:03 p.m. and
13 ended at 1:33 p.m., and candidates stayed after the forum to answer questions. A total of 90
14 NCRWF members and guests attended the forum. *Id.*

15 In a sworn declaration, Buescher acknowledges that she attended the forum at LaMalfa's
16 request and promoted LaMalfa's candidacy while there.³ *See* Buescher Decl. at 1. Buescher
17 attests that, consistent with LaMalfa's office policy regarding political activity by employees,
18 she took four hours of vacation time, in addition to her lunch hour, to attend the forum.⁴ *Id.* at
19 2-3.

³ The Committee submitted a supplemental response on November 13, 2012, that included Buescher's declaration; Buescher, had not previously responded individually to the complaint.

⁴ Buescher's declaration included a copy of her official vacation leave record and a copy of an e-mail communicating her leave request to LaMalfa's Senate Chief of Staff. Buescher Decl. at 2. Buescher also declared that she was entitled to one hour of leave time for lunch during her work day as a state senate employee. Buescher Decl. at 3.

1 The California Office of the Attorney General ("California Attorney General"), who the
2 Commission notified on behalf of the State of California, asserts that the California Attorney
3 General has no supervisory role over LaMalfa or Buescher and does not represent members of
4 the State Legislature. California Attorney General Resp. (June 1, 2012). The California
5 Attorney General also states that it has no specific knowledge regarding Complainant's
6 allegations and requested that no action be taken against the State of California. *Id.*

7 **III. LEGAL ANALYSIS**

8
9 The Complaint alleges that Buescher's attendance at the forum resulted in an excessive
10 in-kind contribution to the Committee that was not disclosed to the Commission in violation of
11 the Act.

12 A contribution includes anything of value made by any person for the purpose of
13 influencing any election for federal office or the payment by any person of compensation for the
14 personal services of another person which is rendered to a political committee without charge
15 for any purpose. *See* 2 U.S.C. § 431(8)(A); 11 C.F.R. §§ 100.52, 100.54.

16 Under the Commission's regulations, however, no contribution results if an employee
17 uses bona fide paid vacation or other earned leave time to engage in political activity. *See*
18 11 C.F.R. § 100.54(c). The value of services provided without compensation by any individual
19 who volunteers on behalf of a candidate or political committee does not constitute a
20 contribution. *See* 2 U.S.C. § 431(8)(B)(i); 11 C.F.R. § 100.74.

21 A person may not contribute more than an aggregate of \$2,500 to any candidate and his
22 authorized political committees for a federal election during the 2011-2012 election cycle.
23 2 U.S.C. § 441a(a)(1)(A). The Commission treats state governments as persons subject to the

1 contribution limits.⁵ *See, e.g.*, MUR 5127 (Dem. Party of Illinois) (states are persons subject to
2 contribution limits). A political committee is prohibited from knowingly accepting any
3 contribution in excess of the contribution limits. 2 U.S.C. § 441a(f). Contributions to political
4 committees must be disclosed to the Commission. 2 U.S.C. § 434(b).

5 Buescher admits that she attended the NCRWF forum on behalf of LaMalfa. Buescher
6 provided information showing, however, that she used four hours of bona fide vacation leave, in
7 addition to her lunch hour, to attend the forum. Because Buescher used bona fide vacation
8 leave to attend the forum, the value of her time is not a contribution to the Committee. *See*
9 11 C.F.R. § 100.54(c); MUR 5127 (contending that there was no contribution to the party
10 committee where chief of staff for state representative who served as executive director of a
11 party committee used accrued leave to perform party activities during business hours).

12 Therefore, the Commission finds no reason to believe that Lisa Buescher and the State
13 of California violated 2 U.S.C. § 441a(a)(1)(A); that Doug LaMalfa violated 2 U.S.C.
14 § 441a(a)(1)(A) or 441a(f); and that Doug LaMalfa Committee and David Bauer in his official
15 capacity as treasurer violated 2 U.S.C. §§ 434(b) or 441a(f).

⁵ The only specific exclusion from the term "person" is the federal government and its related entities. *See* 2 U.S.C. § 431(11); 11 C.F.R. § 100.10.